Joint Committee on Taxation
JCX-32-84
July 31, 1984

COMPARISON OF H.R. 4280 AND H.R. 2769
(Retirement Equity Act of 1984)

INTRODUCTION

This document provides a summary description of the provisions of H.R. 4280 and H.R. 2769, the Retirement Equity Act of 1984. H.R. 4280 was unanimously approved by the House of Representatives on May 22, 1984.

The Senate passed provisions similar in nature to H.R. 4280, in H.R. 2769, as amended by the Senate, on November 18, 1983. H.R. 2769, as passed by the House, contained the Caribbean Basin Recovery Act; this Act was subsequently enacted in title II of H.R. 2973 (P.L. 98-67). The Senate Committee on Finance amended H.R. 2769 with the provisions of S. 1978, and reported H.R. 2769, as amended, on October 29, 1983 (S. Rep. No. 98-285).

The first part of this document lists the provisions that are the same in the House and Senate bills. The second part is a summary comparison of the differences in the provisions of the House and Senate bills.

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I. PROVISIONS THAT ARE THE SAME IN BOTH BILLS

1. Years of service counted for vesting purposes after age 18.

2. Rule of parity changed from 1 year to 5 years for break-in-service computations.

3. Spousal consent required to decline survivor annuity for spouse.

4. Amount of payments under qualified joint and survivor annuity.

5. Special rule for divorced spouse under joint and survivor annuity provisions.

6. Exception to assignment and alienation provisions for qualified domestic relations orders.

7. Definition of qualified domestic relations order.

8. Provision that qualified domestic relations order may not alter amount, form, timing, etc., of benefits payable by the plan.

9. Exception to definition of qualified domestic relations order for payments to former spouse made after earliest retirement age.

10. Tax treatment of divorce distributions.

11. Notice that benefits may be forfeitable.

12. General effective dates.

II. SUMMARY COMPARISON OF DIFFERENCES BETWEEN HOUSE BILL (H.R. 4280) AND SENATE BILL (H.R. 2769)

A. Modifications of Minimum Participation and Vesting Standards

1. Maximum participation age

Present law.--Maximum age that a plan generally can require an employee to attain before becoming a participant is 25.

House bill.--Lowers the general age limit from 25 to 21; lowers the age limit for educational institutions from 30 to 26.

Senate bill.--Lowers the general age limit from 25 to 21; provides no change in the age limit for educational institutions.

Tentative Recommendation

Adopt House provision.

2. Break in service for vesting under defined contribution plans

Present law.--Under defined contribution plans, years of service after a 1-year break in service need not be counted for determining the vested percentage of a pre-break account balance.

House bill.--Except as provided by the rule of parity, years of service after any 5 consecutive 1-year breaks in service are not taken into account in determining the nonforfeitable percentage of employer-derived benefits accrued before the break.

Senate bill.--No provision.

Tentative Recommendation

Adopt House provision.

3. Maternity or paternity leave

Present law.--There is no special break-in-service rule for maternity or paternity leave. Participants on paid maternity or paternity leave may be entitled to credit for up to 501 hours under the normal break in

service rules. Credit of more than 500 hours of service in a period prevents a break in service.

a. Availability of credit

House bill.--Requires credit for absences on account of pregnancy, birth of a child, placement of a child in connection with adoption, or for purposes of caring for the child immediately following the birth or placement.

Senate bill.--Requires credit for absences on account of the birth of a child, adoption of a child, or for purposes of caring for a child immediately following the birth or adoption.

b. Number of hours credited

House bill.--Credits the hours that normally would have been credited under the plan but for the absence or, if the plan is unable to determine the hours, 8 hours per day of absence.

Senate bill.--Credits 8 hours of service for each day of absence.

c. Period for which hours are credited

House bill.--Hours are to be credited only in the year in which the absence begins if needed to prevent a break in service or, in any other case, in the immediately following year.

Senate bill.--No provision.

d. Information required by participant

House bill.--Plan administrator may require that the participant furnish timely information to establish that the absence is for the permitted reasons and the number of days for which there is an absence.

Senate bill.--No provision with respect to plan administrator requesting information.

Tentative Recommendation

Adopt House provision.

B. Joint and Survivor Annuity Provisions

1. Availability of survivor benefits

Present law.--Certain plans must provide a joint and survivor annuity at normal retirement age unless the employee elects benefits in another form. If a plan permits early retirement, then survivor benefit coverage is elective for participants at the later of (a) the plan's early retirement age or (b) 10 years before normal retirement age.

A plan may provide that vested benefits are forfeited if a participant dies before normal retirement age (and has not elected early retirement survivor coverage).

House bill.--In the case of a participant who retires under the plan and who does not elect (with spousal consent) to take benefits in another form, the accrued benefit must be payable in the form of a qualified joint and survivor annuity; in the case of a vested participant who dies before the annuity starting date and who has a surviving spouse, a qualified preretirement survivor annuity must be provided to the surviving spouse.

Senate bill.--A plan must provide for a qualified joint and survivor annuity to a participant who has not elected (with spousal consent) to take benefits in another form, and who (1) while employed, reaches the earliest retirement age and is within 10 years of the normal retirement age or (2) while employed, attains age 45 and has completed at least 10 years of service.

Tentative Recommendation

Adopt House provision.

2. Plans required to provide survivor benefits

Present law.--Only plans that provide a life annuity as the normal form of benefits must provide a joint and survivor annuity (unless the participant declines it). BBS Associates, Inc. v. Comm'r.

House bill.--Any defined benefit plan, any defined contribution plan subject to the minimum funding standards (i.e., a money purchase plan), and any participant under any other defined contribution plan must provide a survivor benefit unless (1) the plan pays the vested account balance upon the participant's death, (2) the participant does not elect benefits in the form

of a life annuity, and (3) the plan is not an indirect or direct transferee of a plan required to provide a survivor benefit. Overrides BBS Associates.

Senate bill.--Any plan that provides for the payment of benefits in the form of a life annuity must provide a survivor benefit. The bill also requires defined benefit plans to provide a life annuity option under the plan. Overrides BBS Associates.

Tentative Recommendation

Adopt House provision, but clarify that a money purchase pension plan that is adopted as part of an ESOP is not treated as a plan subject to the minimum funding standards for purposes of the House rule.

3. **Written explanation of survivor benefits**

Present law.--Participant must be notified of the right to decline a joint and survivor annuity. Notice must be given within a reasonable period before the annuity starting date.

Notice of elective survivor benefit must be given within a reasonable period before early retirement age.

House bill.--Notice is required within a reasonable period before the annuity starting date (no separate written explanation is required for the preretirement survivor benefit); the explanation must specify the rights of the participant's spouse.

Senate bill.--Notice is required during the period beginning on the first day of the election period and ending on the 90th day before the participant becomes a qualified participant.

Tentative Recommendation

Adopt Senate provision, but require a separate written explanation of the preretirement survivor benefit.

4. **Election period**

Present law.--A participant can decline a qualified joint and survivor annuity within a reasonable period (90 days under Treasury regulations) before the annuity starting date.

House bill.--In the case of an election to waive the qualified joint and survivor annuity, the election period is the 90-day period ending on the annuity starting date; in the case of an election to waive a

qualified preretirement survivor annuity, the election period is the period that begins on the first day of the plan year in which the participant attains age 35 and ends on the date of the participant's death. In the case of a separated participant, the election period is the period that begins on the date of separation with respect to benefits accrued before that date.

Senate bill.-- The election period is the period beginning on the earlier of the date on which the participant attains age 42 or the earliest retirement age and ending on the annuity starting date.

Tentative Recommendation

Adopt Senate provision, but provide that the joint and survivor annuity election can be made only within the 90-day period ending on the annuity starting date and change the beginning of the notice period for the preretirement survivor annuity from age 42 to 32.

5. 2-year nonaccidental death rule

Present law.--A plan may provide that the survivor annuity is forfeited if the participant dies (due to nonaccidental causes) within 2 years after an election is made with respect to a joint and survivor annuity.

House bill.--Drops the 2-year rule.

Senate bill.--Retains the 2-year rule.

Tentative Recommendation

Adopt House provision.

6. 1-year marriage rule

Present law.--The plan may provide that the survivor annuity is payable only if the participant is married to the same spouse for at least 1 year before (a) the annuity starting date, and (b) death.

House bill.--A joint and survivor and preretirement survivor annuity need not be provided unless the participant and spouse had been married during the 1-year period ending on the earlier of the participant's annuity starting date or the participant's death. If the participant marries within 1 year before the annuity starting date and the participant and spouse have been married for at least 1 year at the date of death, they are treated as satisfying the 1-year marriage rule.

Senate bill.--No special rule for marriages within 1 year of the annuity starting date.

Tentative Recommendation

Adopt House provision.

7. Restrictions on cash-outs

Present law.--Payments to a surviving spouse or to the former spouse of a participant may be made without the consent of the surviving spouse or former spouse.

House bill.--

(a) No cash-out is permitted without the consent of the surviving spouse if the present value of benefits exceeds $3,500;

(b) No cash-out is permitted after annuity starting date unless the participant or surviving spouse consents;

(c) Consent is required for cash-outs in excess of $3,500; and

(d) Present value is determined using an interest rate no greater than the PBGC rate for valuing lump sum distributions upon plan termination.

Senate bill.--No cash-out may be made without the consent of the surviving spouse if the present value of the benefit exceeds $3,500.

Tentative Recommendation

Adopt House provision.

C. Special Rules for Assignments in Divorce, Etc., Proceedings

1. ERISA preemption

Present law.--ERISA preempts all State laws that are inconsistent with its provisions. Some courts have created an implied exception for State domestic relations law.

House bill.--Qualified domestic relations orders are excepted from the ERISA preemption provisions.

Senate bill.--No ERISA preemption exception is provided.

Tentative Recommendation

Adopt House provision.

2. Facts that order must specify

Present law.--No applicable provision.

House bill.--Requires the mailing address of the participant if it is available.

Senate bill.--Requires the mailing address of the participant in all events.

Tentative Recommendation

Adopt Senate provision, but require that the order contain the participant's last known address, if any.

3. Plan procedures with respect to order

Present law.--No applicable provision.

House bill.--A plan administrator is to determine whether an order is qualified within a reasonable period after receipt of the order; the ERISA provisions of the House bill provide procedures with respect to (1) the maximum amount of benefits that a qualified domestic relations order may allocate to an alternate payee, and (2) the procedures that the plan administrator must follow in advising alternate payees of their rights.

Senate bill.--A plan administrator is to determine whether an order is qualified within a reasonable period before benefit payments commence; the Senate bill provides procedures that are similar to the House bill, but do not contain all of the provisions specifying the maximum amount of benefits that a qualified domestic relations order may allocate to an alternate payee.

Tentative Recommendation

Adopt House provision on the time for determining whether an order is qualified; adopt the Senate provision on other plan procedures. In addition, provide that benefits in excess of the actuarial equivalent of the normal retirement benefit are to be paid to an alternate payee only if the participant has actually retired.

4. Procedures for period during which a determination is being made

Present law.--No applicable provision.

House bill.--

(a) During any period for which a determination is being made, the plan administrator is to segregate the amounts in dispute in a separate account in the plan or in an escrow account; and

(b) If, within 2 years, the order is determined to be qualified, the plan administrator is to pay the segregated amounts plus interest to the divorced spouse or other alternate payee. If the issues are not resolved or the order is found not to be qualified within 2 years, the plan administrator is to pay the benefits to the participant, and any subsequent determination that the order is qualified is to be applied prospectively.

Senate bill.--

(a) No segregation of assets is required; and

(b) If the order is determined not to be qualified, the plan administrator may postpone the payment of benefits, pay the benefits to the participant, or pay the benefits to the alternate payee.

Tentative Recommendation

Adopt House provision, but change the period of suspension to 18 months.

5. **Missing alternate payee**

Present law.--State escheat laws are permitted to operate to forfeit the benefit of a lost beneficiary after a period of time (usually 7 years), but a plan may include provisions to prevent escheat.

House bill.--

(a) No express provision;

(b) Plan administrator may not forfeit the amounts payable or pay them to the participant; and

(c) State escheat laws are permitted to operate to forfeit the benefit after a period of time (usually 7 years), as under present law.

Senate bill.--If the plan administrator cannot locate an alternate payee, payments may be postponed for 1 year and then paid to the person who would be eligible to receive them if the order did not exist.

Tentative Recommendation

Adopt House provision.

D. Involuntary Cash-outs--Calculation of Present Value

Present law.--If the present value of benefits of a participant who separates from employment does not exceed $1,750, the plan can cash out the benefits without the participant's consent. No credit for prior service is required if the participant later returns and does not repay the amount previously cashed out.

House bill.--Requires the use of an interest rate assumption no greater than the PBGC rate for valuing lump-sum distributions on plan termination.

Senate bill.--No provision.

Tentative Recommendation

Adopt House provision.

E. Notice of Rollover Treatment to Recipients of Lump-sum Distributions

Present law.--A plan administrator is not required to notify participants of the conditions upon which distributions are eligible for 10-year income averaging or rollover to an IRA or another qualified plan.

House bill.--Requires a plan administrator to notify the participant that distributions may be eligible for rollover to an IRA or another qualified plan and that the transfer must be made within 60 days of receipt. The penalty for each failure is $10 up to $5,000 each calendar year.

Senate bill.--No provision.

Tentative Recommendation

Adopt House provision, but require the issuance of officially approved notices by the Treasury that also describes a participant's rights to 10-year income averaging.

F. Rev. Ruls. 79-90 and 81-12

Present law.--Prohibits plan amendments that reduce previously accrued benefits. Rev. Rul. 79-90 requires plan to specify interest rate assumptions used to value benefits. Rev. Rul. 81-12 prohibits plan amendments that operate to eliminate benefit options or operate to eliminate previously accrued benefits.

House bill.--The bill prohibits the elimination or reduction of a benefit through a plan amendment that changes the basis for determining actuarial equivalency with respect to previously accrued benefits, and prohibits the elimination or reduction of a subsidy, an accrued early retirement benefit, or an optional form of benefit under a defined benefit plan. It does not prevent prospective changes in benefits.

Senate bill.--No statutory provision; committee report contains language, similar to House bill provision, describing present law with respect to optional benefit forms.

Tentative Recommendation

Adopt House provision for all plans, with the following modifications:

(1) provide no special rule for terminated plans (PBGC would continue to guarantee only those benefits it guarantees under present law);

(2) clarify the scope of the provisions with respect to nonretirement-type benefits (such as social security supplements, death benefits, or medical benefits);

(3) clarify that the provisions only protect participants who subsequently satisfy the conditions for receipt of the benefits;

(4) permit elimination of optional benefit forms under Treasury regulations under limited circumstances (e.g., when the law changes, or if the optional form does not provide a valuable right); and

(5) the provision would apply to amendments made on or after July 31, 1984; there would be no inference with respect to present law.

G. Effective Dates

1. Notice of rollover treatment to recipients of lump-sum distributions

House bill.--Effective for distributions after December 31, 1984.

Senate bill.--No provision.

Tentative Recommendation

Adopt House provision.

2. Age at which service must be credited for vesting purposes

House bill.--Applies to participants who have at least 1 hour of service on or after the date of enactment.

Senate bill.--Applies to participants who have at least 1 hour of service on or after the effective date.

Tentative Recommendation

Adopt Senate provision.

3. Break in service rules

House bill.--No retroactive credit is required under the break in service rules.

Senate bill.--No express provision.

Tentative Recommendation

Adopt House provision.

4. Eligibility for survivor benefits

House bill.--Generally applies to participants who have at least 1 hour of service on or after the date of enactment (including 1 hour of paid leave).

Senate bill.--Generally applies to participants who have at least 1 hour of service on or after the effective date.

Tentative Recommendation

Adopt House provision.

5. Spousal consent required to waive the qualified joint and survivor annuity

House bill.--Spousal consent is required for elections after the date of enactment.

Senate bill.--Spousal consent is required for elections after the effective date.

Tentative Recommendation

Adopt Senate provision with effective date of January 1, 1985.

6. Availability of preretirement survivor benefits in the case of participants dying after the date of enactment

House bill.--The preretirement survivor benefit rules are effective on the date of enactment for any participant who (1) has 1 hour of service after that date; (2) dies before the annuity starting date; and (3) dies on or after the date of enactment and before the effective date. A plan can provide elections to qualified participants on or after the date of enactment.

Senate bill.--No provision.

Tentative Recommendation

Adopt House provision.

7. Treatment of participants who separate from service before the date of enactment under the joint and survivor annuity provisions

House bill.--If a participant had at least 1 hour of service on or after September 2, 1974, separated from service before January 1, 1976, and the annuity starting date has not occurred before the date of enactment, then the joint and survivor annuity rules of ERISA apply to the participant.

Senate bill.--No provision.

Tentative Recommendation

Adopt House provision.

8. Treatment of participants who perform service on or after January 1, 1976, under the joint and survivor annuity provisions

House bill.--

(a) If a participant had at least 1 hour of service on or after January 1, 1976, had at least 10 years of service and was at least partially vested upon separation from service, and whose annuity starting date has not occurred, then the participant may elect to be covered under the preretirement survivor annuity provisions;

(b) The plan must give notice in the first summary annual report made after December 31, 1984;

(c) The penalty for failure to give notice is $1 per participant per day of failure up to $2,500 for any plan. The Secretary of Labor is required to publish notices to inform participants of this right; and

(d) If the plan notice is given, the plan is not liable for the benefit unless an election is received.

Senate bill.--No provision.

Tentative Recommendation

Adopt House provision, but require appropriate notice to participants and require that the benefit is to be provided as a joint and survivor benefit if the plan is so notified.

9. Divorce, etc., proceedings

House bill.--

(a) Effective on the date of enactment (whether an order is received before, on, or after the date of enactment); and

(b) An order issued before the date of enactment is treated as qualified (1) with respect to benefits in pay status on the date of enactment and (2) with respect to other benefits, to the extent consistent with the provisions of the bill.

Senate bill.--Effective on January 1, 1985, except that in the case of orders entered before that date, the plan administrator must treat as qualified orders in pay status and may treat as qualified any other order.

Tentative Recommendation

Adopt Senate provision.

10. Requirement that defined benefit plans provide life annuities

House bill.--No special grandfather provision.

Senate bill.--Provisions do not apply to a defined benefit plan in existence on October 19, 1983, that did not provide for the payment of life annuities at that time.

Tentative Recommendation

Adopt House provision.

H. Study by GAO

House bill.--Directs the Comptroller General to conduct a detailed study of the effect of participation, vesting, funding, integration, survivorship features, and other relevant plan rules on women; gives GAO access to plan and employer documents and records.

Senate bill.--No provision.

Tentative Recommendation

Adopt House provision.

I. Additional Issue - Involuntary Cash-out of Mandatory IRA Rollover

House bill.--Prevents a plan from involuntarily cashing out a benefit to a surviving spouse unless the plan gives the surviving spouse the opportunity to designate an IRA or another qualified plan as the recipient of a direct rollover. A plan may involuntarily cash out a benefit if no designation is received within 60 days of the notice of intent to cash out.

Senate bill.--No provision.

Tentative Recommendation

Adopt Senate provision.